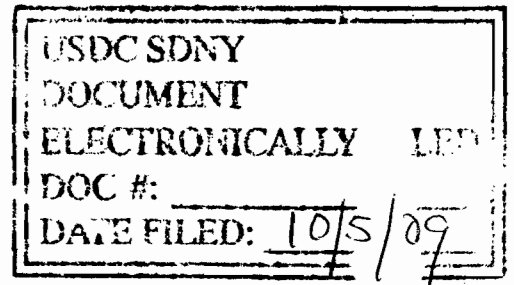


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**



-----X
**WILLIAM G. CUMMINGS and JAY G.
LEVINE,**

Plaintiffs,

- against -

ADIDAS USA, et al.,

Defendants.
-----X

**OPINION AND
ORDER**

08 Civ. 9860 (SAS)

SHIRA A. SCHEINDLIN, U.S.D.J.:

On September 25, 2009, plaintiffs filed a Second Amended Complaint without first seeking leave of the Court or defendants' written consent. By letter dated September 29, 2009, plaintiffs sought leave to amend the Second Amended Complaint to correct a "ministerial error."¹ On October 2, 2009, defendants submitted a letter in response objecting to plaintiffs' filing of the Second Amended Complaint and to plaintiffs' September 29, 2009 request to amend via letter.²

Because plaintiffs failed to comply with the Federal Rule of Civil Procedure Rule 15(a)(2) and paragraph III(B) of this Court's Individual Rules and Procedures, plaintiffs' Second Amended Complaint is hereby stricken from the

¹ See 9/29/09 Letter to the Court from Jon Jekielek, plaintiffs' counsel.

² See 10/2/09 Letter to Court from B. Trent Webb, defendants' counsel.

record and their letter request to amend the Second Amended Complaint is hereby denied.

If plaintiffs wish to re-file a Second Amended Complaint, they must either obtain defendants' written consent or move this Court for leave to amend. Plaintiffs shall have until October 12, 2009 to file a motion for leave to amend. If plaintiffs file a motion for leave to amend, defendants shall have until October 26, 2009 to file an opposition and plaintiffs shall have until November 2, 2009 to reply.

The Clerk of the Court is directed to strike the Second Amended Complaint from the docket (Docket no. 60).

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Shira A. Scheindlin', is written over a horizontal line.

Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
October 2, 2009

- Appearances -

For Plaintiffs:

Jon D. Jekielek, Esq.
Ira S. Meyerowitz, Esq.
Meyerowitz Jekielek PLLC
347 Fifth Avenue
Suite 1300
New York, New York 10016
(212) 686-7006

For Defendants:

B. Trent Webb, Esq.
Shook, Hardy & Bacon LLP
2555 Grand Boulevard
Kansas City, Missouri 64108-2613
(816) 474-6550